

TOWN OF KITTERY, MAINE  
PLANNING BOARD MEETING  
Council Chambers

APPROVED  
March 13, 2014

Meeting called to order at 6:04 p.m.

Board Members Present: Tom Emerson, Karen Kalmar, Bob Melanson, Mark Alesse, Deborah Driscoll Davis, Susan Tuveson, Ann Grinnell

Members absent: none

Staff: Gerald R. Mylroie, AICP, Town Planner; Chris DiMatteo, Assistant Town Planner

Pledge of Allegiance

Minutes:

Mr. Melanson moved to approve the minutes of February 20, 2014 as amended

Ms. Kalmar seconded

Motion carried; 5 in favor; 2 abstentions

Public Comment: There was no public comment.

PUBLIC HEARING

ITEM 1 – Beatrice Way – Right-Of-Way Plan – Preliminary Plan Completeness Review

Action: hold public hearing and review plan application. Owner Operation Blessing LP, and applicant Richard Sparkowich, propose a new Right-Of-Way to allow the division of remaining land from the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley, Easterly Survey Inc.

Richard Sparkowich, Old Farm Road, Kittery, explained he and his wife are one-half of the Operation Blessing Limited Partnership (OB LP) with a Board of Directors the other half. He summarized the application for a single-lot right-of-way, and presented a plan to the Board. They have a buyer for the lot but need a right of way to the lot to sell it and do not understand why they are subjected to subdivision review, and should not be combined with the previously approved subdivision.

Mr. Mylroie explained the history of the approved subdivision and the creation of a non-conforming lot without required frontage; flag lot definition; history of the Highpoint Circle and Beatrice Way subdivisions, miscellaneous access ways, responsibilities, and area disputes; creating a right of way to meet frontage and provide access to lots affected by the proposed division; use of portions of property owned by OB LP for logging (with a state permit), though it is not a permitted use in the zone.

Mr. Sparkowich noted OB LP owns Kittree Lane; explained he received a deeded right-of-way following the Highpoint Circle development, engaged in a land swap to complete the development, and an agreement to provide road access to the lot. Logging ceased 2 years ago and continuing work is clean-up only. Currently a buyer is interested in the property for a single family home.

Public Hearing opened at 7:00 p.m.

Rachel Sparkowich: Feels like they have been on a merry-go-round forever. They have done what they have been asked to do to the best of their ability. It seems there is never enough they can do and this has been going on for 10 years. When is it going to end?

Joe Gasbarro, 11 Highpoint Circle, has attended Planning Board meetings since 2004. Recalls when the 3-lot subdivision was approved that any new right-of-way extending to Kittree Lane would be constructed similar to Highpoint Circle, including sidewalks and street signage. The right-of-way he uses is owned by Mr. Hansen and himself with a right for OB LP use. Why would the Town allow construction and

logging vehicles access via Highpointe Circle vs. Kittree Lane? Requested that what is left of Woods Road be closed to vehicular traffic. Where does Beatrice Lane come in?

Gary Holmes, Kittery, President of Operation Blessing, practicing Attorney. OB LP is a 501(3)(c) providing assistance to those in need. The only request is to allow a driveway to develop the property for one house, and avoid a large-scale development. The remaining land will not be more non-conforming than it already is. Now is the opportunity to do the right thing for the Sparkowich's and the neighbors.

Brett Taylor, Norton Road, stated he is the prospective buyer of the property. He explained he grew up in Kittery and owns a Kittery business. It is not his intent to develop the land beyond a single home for his family and preserve open space.

Maryann Ciali, 10 Kittree Lane. Would the developed property empty onto Kittree Lane? She and other family members maintain Kittree Lane and ongoing heavy use is of concern. Will the new owner and Beatrice Way subdivision help maintain Kittree Lane?

Public Hearing closed at 7:25 p.m.

Ms. Kalmar asked if Mr. Taylor and/or Mr. Sparkowich would consider a deed restriction limiting development on this parcel to a single family home. Both responded in the negative.

Mr. Emerson summarized the issues:

1. Lot division and configuration;
2. Access and road design;
3. Where does one road/right-of-way start and end?
4. Use of OB LC remaining land including its use for logging as permitted by the state.

The Board has been asked to address #1 and #2, but how will a decision impact #3 and #4. He suggested the Board see the site.

Mr. Sparkowich suggested modifying Woods Road to address the neighbors concern, noting again that logging is done. Discussion followed regarding use of Old Farm Road, Kittree Land and Highpointe Circle. Members requested a more detailed map showing these roads to their full length.

Ms. Tuveson moved to continue review of the application pending a site walk

Ms. Grinnell seconded

Board members discussed continuing or conducting another public hearing. A site walk was scheduled for Tuesday, April 1 at 5:00 p.m. Parties will meet at the end of Highpoint Circle. Ms. Grinnell asked for a more detailed map of the roads in the area. Mr. Emerson asked that anyone with deeds describing their roadway rights and access in this area provide same to the Planning Department prior to March 27. Mr. Markley stated he will provide a package for the Board.

Ms. Tuveson amended her motion to continue review of the application to April 10.

Seconded by Ms. Kalmar

Motion carried unanimously

ITEM 2 – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.

Action: hold a public hearing and make recommendation to Town Council. An amendment to the Town Code to address the applicability of the Soil Suitability Guide for Land Use Planning in the State of Maine referenced in Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed amendment also includes changes to the net residential area calculations and associated definitions in Title 16.2.

Public Hearing opened at 8:04 p.m.

John Watts, regarding 143 Brave Boat Harbor development. Question regarding proposed Title 16.7 General Development Requirements, Article VIII. Net Residential Acreage C: *All wetlands as defined in Title 16.2 Wetland, as well as vernal pools, ponds, lakes, streams and other water bodies, including 50% of all setbacks including buffer areas.* How can you take an additional 50% of buffer areas you can't use anyway? Ms. Kalmar stated areas that dwelling units cannot be reasonably built upon are excluded. If the setback is considered somewhat poorly drained, 50% of the buffer would be available for the net calculations, though the total buffer area cannot be built upon. Mr. Watts stated it sounds like an additional 50% will be taken away from net available area by the way it is written.

Public Hearing closed at 8:13 p.m.

Mr. Watts asked if a bonus could be granted for a pre-treatment system. Mr. Emerson stated that pre-treatment is the direction, but the Board cannot enforce maintenance. Mr. Watts explained the use of specific sand should be required for septic installation. The sand is available, but using the specified sand is not enforced. In Massachusetts they require organic soils be placed in areas where septic systems are located in an effort to protect and support the environment

Mr. Mylroie suggested as the Board reviews septic system amendments, sand specifications (ASTM) can be addressed. He asked Mr. Watts to submit his suggestions via email for the Code Subcommittee. Members discussed the pre-treatment suggestion by Mr. Watts and will include in their Subcommittee discussions, and added to the Board's Action List.

Discussion followed regarding how to avoid deducting land area more than once. Suggested addition: No land area affected by the multiple criteria in Title 16.7.8.1 A-K shall be deducted twice. This will be further reviewed by the Code Subcommittee.

Mr. Melanson moved to send the proposed Title 16.7.8.1 back to the Code Subcommittee for reconsideration, specifically to include an additional Title 16.7.8.2 and amending 2 to 3.

Ms. Grinnell seconded

Motion carried unanimously

OLD BUSINESS

ITEM 3 – Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use Development Code. Discuss proposed amendment and make recommendation to Town Council. Amendment includes changes to 16.7.3.5.10. Contiguous Non-Conforming Lots that would allow for more consistent adjustment to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.

Mr. DiMatteo noted the Board will need to address the MDEP 2000 and 2010 revisions that impact the entire Article 7. Board members agreed this can be done separately from this revision as MDEP has already reviewed this revision. Mr. Emerson stated this was brought to the Board by a member of the public and should go to the Council now instead of waiting to include in a bundle to Council.

Ms. Grinnell moved to approve the addition of Title 16.7.3.5.12 as presented and forward with a recommendation to Town Council for adoption.

Mr. Melanson seconded

Motion carried unanimously

ITEM 4 – Town Code Amendment - Title 16.10.9.1.4. Approved Plan Expiration and Title 16.10.9.1.5 Requests for Extension. Discuss proposed amendment and make recommendation to Town Council. Proposed amendment reduces the period of time in which extensions can be granted and modifies the process for extension requests.

Discussion of need for definition for 'substantially complete'. Mr. Alesse submitted a suggestion for a definition. Discussion followed regarding time limits for completion, and what happens to an approved project once the time period expires. Mr. Emerson asked the Subcommittee to review this Article and return to the Board.

Mr. Melanson moved that Title 16.10.9.1.4 and 16.10.9.1.5 be returned to the Code Subcommittee to address calendar year, substantially complete, and five year extension for subdivision plans and return to the Board.

Ms. Grinnell seconded

Ms. Tuveson noted 365 days falls before the final approval date. May wish to use months.

Motion carried unanimously.

#### ITEM 5 – Board Member Items / Discussion

##### A. Action plan review and prioritization discussion

Add for discussion:

- Septic pre-treatment bonus
- Use of specified materials/sand

Move Completed Items to separate page

How will items be prioritized (public requests probably being first on the list). This will be included on the next meeting agenda.

##### B. Comprehensive Plan Update Status

The Committee is currently working on various sections including Transportation; format is still under discussion; renewed interest in update by the Economic Development Committee; direction of process needs to be clarified with Council in upcoming workshop;

##### C. Quality Improvement Plan for Kittery Shore and Harbors

Final draft under review/preparation; will become part of the Comp Plan.

##### D. Other

- Ms. Grinnell - Council Discussion Checklist:

Board members discussed the RTC template - could the format be simplified for ordinance submittals?; Council sponsorship process/how to coordinate?; Phase 2 Destination Marketing?; Water District site; EDC Advisory Committee - to who?

#### ITEM 6 – Town Planner Items

A. Kittery Town Planning & Development Briefing Book - Outlines roles and responsibility of Board members and staff; activity in Kittery over the past four years; description of various Town programs and resident Committees in place.

B. Destination Marketing Program - Route 1-BP to Kittery Gateway - Concern the identification of the Bypass as the 'Gateway to Maine' is confusing - perhaps find another name; further discussion needed.

C. Quality Improvement Overlay Zone

D. Sign Standards and Compliance - Will be work shopped.

E. PNSY Bridge 1 Structural Repair Project - Send comments to Town Manager via website. Redevelopment of old Navy prison and potential impact on Kittery. Meeting in Eliot at Regatta on April 9, 9:00 a.m.-2:00 p.m.

F. Other

Ms. Grinnell moved to adjourn

Mr. Melanson seconded

Motion carried by all members present

The Kittery Planning Board meeting of March 13, 2014 adjourned at 9:56 p.m.  
Submitted by Jan Fisk, Recorder, March 20, 2014